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January 7, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal

Date of Filing: July 19, 2004

Case No.: TIA-0143

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for DOE assistance in filing for state workers' compensation benefits. The OWA referred the application to an independent Physician Panel (the Panel), which determined that the worker's illnesses were not related to his work at a DOE facility. The OWA accepted the Panel's determination, and the Applicant filed an Appeal with the DOE's Office of Hearings and Appeals (OHA), challenging the Panel's determination. As explained below, we have concluded that the appeal should be denied.

*I. Background*

*A. The Relevant Statute and Regulations*

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. As originally enacted, the Act provided for two programs. Subpart B established a Department of Labor (DOL) program providing federal compensation for certain illnesses. See 20 C.F.R. Part 30. Subpart D established a DOE assistance program for DOE contactor employees filing for state workers' compensation benefits. Under the DOE program, an independent physician panel assessed whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3); 10 C.F.R. Part

852 (the Physician Panel Rule). The OWA was responsible for this program, and its web site provides extensive information concerning the program.

The Physician Panel Rule provided for an appeal process. An applicant could appeal a decision by the OWA not to submit an application to a Physician Panel, a negative determination by a Physician Panel that was accepted by the OWA, and a final decision by the OWA not to accept a Physician Panel determination in favor of an applicant. The instant appeal was filed pursuant to that Section. The Applicant sought review of a negative determination by a Physician Panel that was accepted by the OWA. 10 C.F.R. § 852.18(a)(2).

While the Applicant's appeal was pending, Congress repealed Subpart D. Ronald W. Reagan Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375 (October 28, 2004). Congress added a new subpart to the Act - Subpart E, which establishes a DOL workers' compensation program for DOE contractor employees. Under Subpart E, all Subpart D claims will be considered as Subpart E claims. OHA continues to process appeals until DOL commences Subpart E administration.

#### *B. Procedural Background*

The Applicant was employed as a sheet metal trainee at the DOE's Oak Ridge site. He worked at the site for ten months, from June 1952 to April 1953.

The Applicant filed an application with the OWA, requesting physician panel review of four illnesses: colon cancer, bilateral renal cyst, hepatic cyst, and nodules in the body. The Applicant claimed that his illnesses were the result of exposure to hazardous chemicals at the site. The Physician Panel rendered a negative determination with regard to all of the claimed illnesses. The Panel agreed that the Applicant had each of these illnesses, but concluded that they were not due to toxic exposure at the DOE site. The OWA accepted the Physician Panel's negative determinations. In his appeal, the Applicant challenges the negative determinations.

## II. Analysis

Under the Physician Panel Rule, independent physicians rendered an opinion whether a claimed illness was related to exposure to toxic substances during employment at a DOE facility. The Rule required that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at the DOE site, and state the basis for that finding. 10 C.F.R. § 852.12.

In his appeal, the Applicant contends that the Panel did not specifically address the presence of nodules in his lungs. In support of this assertion, the Applicant resubmitted a radiology consultation report dated September 23, 1999.<sup>1</sup> Contrary to the Applicant's assertion, the Panel specifically considered his lung nodules. The Panel both evaluated and referenced this radiological report.<sup>2</sup> Consistent with the report, the Panel determined that "these 'nodules in the body' are most probably the manifestation of an old infection."<sup>3</sup>

With respect to all his illnesses, the Applicant contends that he was exposed to many hazardous chemicals. As an example, the Applicant resubmits a laboratory record measuring the presence of potentially toxic elements in a hair sample.<sup>4</sup> These arguments are not bases for finding Panel error. The Physician Panel addressed each of the claimed illnesses, made a determination for each, and explained the reasoning for each conclusion. The arguments presented in the appeal are merely disagreements with the Panel's medical judgment, rather than indications of error on the part of the Panel.

As the foregoing indicates, the appeal does not provide a basis for finding panel error and, therefore, should be denied. In compliance with Subpart E, these claims will be transferred to the DOL for review. The DOL is in the process of developing procedures for evaluating and issuing decisions on these claims. OHA's denial of these claims does not purport to dispose of or in any way prejudice the Department of Labor's review of the claim under Subpart E.

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<sup>1</sup> Panel Report, at 4.

<sup>2</sup> See *id.* at 2.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> See Record, at 44.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0143 be, and hereby is, denied.
- (2) The denial pertains only to the DOE claim and not to the DOL's review of this claim under Subpart E.
- (3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: January 7, 2005